

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

AVIDYNE CORPORATION,

Plaintiff,

v.

L-3 COMMUNICATIONS AVIONICS  
SYSTEMS, INC., f/k/a B.F. GOODRICH  
AVIONICS SYSTEMS, INC.,

Defendant.

C.A. No. 05-11098 GAO

**EMERGENCY MOTION TO MODIFY SCHEDULING ORDER**

Pursuant to Fed. R. Civ. P. 26(a)(2)(C), plaintiff Avidyne Corporation (“Avidyne”) respectfully requests that this Court modify the current scheduling order to address a fundamental disagreement between the parties on how to interpret certain of the deadlines. In particular, defendant L-3 Communications Avionics Systems, Inc. (“L-3”) asserts that the current order requires Avidyne to serve all of its expert reports by September 18, 2006. L-3’s interpretation strains credulity, however, as it would have Avidyne serving expert reports on issues, including non-infringement, invalidity, and damages, before L-3 has identified which claims it asserts Avidyne is infringing, and three months before the completion of fact discovery.

For this and other reasons, Avidyne disagrees with L-3’s interpretation of the Scheduling Order.

The current Order sets forth the following deadlines:

Designation of Plaintiff’s Experts	9/18/06
Designation of Defendant’s Experts	10/2/06
Opening Markman Briefs:	9/16/06

Opposition Markman Briefs:	9/27/06
Markman Hearing:	10/11/06
Fact Discovery Completed	12/1/06
Expert Discovery Completed	2/13/07

In order to clarify the sequence of events in this litigation and prevent further disputes, Avidyne respectfully requests that the current Scheduling Order be modified as follows:

Fact Discovery to Be Completed By:	12/4/06
L-3 To Identify All Claims Being Asserted By:	9/8/06
Opening Markman Briefs (filed simultaneously) Due:	10/13/06
Responsive Markman Briefs (filed simultaneously) Due:	10/27/06
Markman Hearing:	<i>To Be Scheduled By Court</i>
Expert Reports of Party With Burden of Proof Due:	1/5/07
Responsive Expert Reports Due:	2/5/07
Expert Depositions to Be Completed By:	3/23/07

In further support for this *Emergency Motion to Modify Scheduling Order*, Avidyne relies on the *Memorandum of Law in Support of Emergency Motion to Modify Scheduling Order*, and the *Declaration of Jason C. Kravitz in Support of Emergency Motion to Modify Scheduling Order*, filed herewith.

### **BASIS FOR EMERGENCY FILING**

As set forth above, it has become clear that the parties fundamentally disagree on how to interpret the Scheduling Order presently governing this litigation. Absent intervention by the Court, Avidyne -- the party accused of patent infringement -- will be forced to produce all of its expert reports on September 18, 2006 -- before the patent holder articulates its theory of

infringement or produces any of its reports and almost three months before the close of fact discovery. If Avidyne holds this issue in abeyance until the September 11, 2006 Status Conference, it risks leaving itself only one week to prepare its expert reports.

WHEREFORE, plaintiff Avidyne Corporation respectfully requests that this Court modify the current scheduling order, as set forth above, and enter such further and additional relief as this Court deems necessary and proper.

Dated: August 23, 2006

/s/ Maia H. Harris

Jason C. Kravitz, BBO No. 565904

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**CERTIFICATION PURSUANT TO L.R. 7.1(A)(2)**

I hereby certify that Avidyne's counsel attempted to resolve this dispute in a conference call with counsel for defendant L-3 Communications Avionics Systems, Inc. ("L-3") on August 22, 2006, but that effort was unsuccessful. *See* Declaration of Jason C. Kravitz (Exhibit 1 to Avidyne's *Memorandum of Law*) at ¶¶ 2-3.

/s/ Maia H. Harris